

# MEMORANDUM

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**DATE:** December 21, 2018

**TO:** Mayor and City Council

**THROUGH:** Julie Edmonds-Mares, City Manager

**FROM:** Mary Lavelle, City Clerk/Elections Official

**SUBJECT:** Information regarding Recall of Local Elected Official

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Much of the information contained in this information memo was derived from the Santa Clara County Registrar of Voters *Guide to Recall for Local Offices*, revised January 2018, and the California Secretary of State. Due to the complexity of the recall process, all parties involved are advised to seek private legal counsel.

## **General Information**

The California Constitution defines recall as, "the power of the electors to remove an elective officer" (Article II, Section 13). California Elections Code (EC) further states that any elective officer, including any officer appointed in lieu of an election or to fill a vacancy may be recalled (EC §11006).

In general, any elective officer of a city can be recalled with few exceptions, including: the incumbent has not held office during his or her current term for more than 90 days; a recall election has been decided in the incumbent's favor within the last six months; the incumbent's term of office ends within six months or less (EC §11007).

Any Milpitas registered voter may initiate a recall.

The City Clerk, as the Elections Official for the City of Milpitas, is responsible for administering municipal elections in accordance with California Elections Code.

Recall proponents who organize to qualify a recall for the ballot and those who organize to oppose such recall effort may have campaign disclosure and filing obligations under state law, if they form a campaign committee and meet minimum contribution or expenditure thresholds.

## **Recall Process**

Although the recall power is reserved to voters in the California Constitution, the recall process is addressed in and governed by the California Elections Code. The Elections Code provides a detailed process governing the recall of local elected officials. In general, the recall process begins with the recall proponents' service, filing and publication of a "Notice of Intent to Circulate a Recall Petition" (EC §11006). Following the incumbent's written answer of 200 words or less to the Notice of Intent (EC §11023), and approval of the form of the petition by the City Clerk/Elections Official (EC §11042), the recall proponents may begin to circulate the recall petition (EC §11042(d)). Circulation of the petition must be completed within 120 days from the day after the City Clerk notifies the recall proponents of approval (EC §11220(a)(4)).

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After circulation of the petition, and receipt of all sections of the petition by the City Clerk, the Clerk shall request services of the Santa Clara County Registrar of Voters to examine and certify the signatures (EC §11222-11224). Upon completion of the examination of the petition's signatures, the City Clerk/Elections Official must then certify the sufficiency or insufficiency of the petition (EC §11224(d)). If the City Clerk/Elections Official issues a certificate of sufficiency, she must notify the proponents (EC §11224(c)) and it must then be submitted to the governing board (i.e. City Council) at its next regular meeting (EC §11224(d)). City Council then has 14 days to issue an order stating that a recall election will be held (EC §11240).

The number of qualified signatures required equates to 20% if the voter registration is less than 50,000 but at least 10,000 (EC §11221(a)(3)). Therefore, since the City of Milpitas has 29,931 registered voters at the last report of registration, 5,986 valid voter signatures on the recall petition would be required to be deemed sufficient.

The recall election must be held not less than 88 days, nor more than 125 days after the issuance of the order calling for the election (EC §11242). The recall election consists of two questions: 1) the voters decide whether or not to recall the incumbent, and 2) the voters choose a successor if the recall vote is successful. Nomination of candidates to succeed a recalled officer shall proceed per Elections Code §11381.

As a general law city, there is no legal authority to conduct an all-mail ballot election for the purpose of a recall election (EC §4000).

As indicated, the California Elections Code prescribes detailed direction on procedure, language format, and timeline related to a recall election. For more information, interested parties should review the Elections Code in detail and consult independent legal counsel as necessary.

## **Estimated Cost of Recall Election**

From the Registrar of Voters (ROV), the City Clerk has received an estimate of \$1.426 million as the cost for a Special Election in 2019 consisting of a stand-alone polling place municipal election for a recall. There are minor variables associated with the cost of such an election, primarily based on printing, translation services, ballot layout, ROV staffing, etc.

## **Milpitas-specific Information**

City of Milpitas is a General Law City (not a charter city), and therefore does not have any charter-specific election related regulations. The City must conduct and administer its municipal elections according to California Elections Code, Government Code and any other relevant law for general law cities.

City of Milpitas Municipal Code contains provisions for term limits of elected officials, and it also limits contributions to candidates for local office to a maximum of \$250 per election.

As a general law city, there is no legal authority to conduct an all-mail ballot election for the purpose of a recall election.